IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

RPFC.No. 186 of 2004()

MC.5/2003 of FAMILY COURT, KANNUER

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PETITIONER/1ST PETITIONER:

T.LEENA, W/O.A.JOSE,
AGED 34 YEARS, R/A. THEKKATH HOUSE, NARIKODE,
EZHOME P.O.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS: COUNTER PETITIONER:

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1. A.JOSE, S/O.CHARLEY, AGED 48 YEARS,
R/A. MADATHIL VALLAPPU, KANNADIPPARAMBA, KANNUR.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.KAUSER EDAPPAGATH
BY PUBLIC PROSECUTOR SRI.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

R.P.(FC) No.186 of 2004

Dated this the 7th day of November, 2007

O R D E R

The revision petitioner is the first petitioner in M.C.No.5/2003 in the file of Family Court, Kannur, the proceedings initiated by her under Section 125 Crl.P.C. claiming maintenance for herself and two minor children who are petitioners 2 and 3. The Family Court allowed maintenance at the rate of Rs.400/- per month to the second petitioner and Rs.350/- per month to the third petitioner but declined the prayer of the first petitioner/revision petitioner for maintenance.

2. It is the case of the petitioner that she married the respondent/counter petitioner on 17.6.1985 and the second and third petitioners, the children, are born in the wedlock. According to her, the respondent was in the habit of harassing her without any sufficient reason and alleged that he had failed to provide maintenance to the petitioners. According to her, the respondent is having an income of Rs.4,000/- per month from his employment at Dinesh Beedi Company. She has claimed

maintenance at the rate of Rs.500/- per month for herself and at the rate of Rs.400/- per month for the minor children. The respondent has denied the liability although admitted the marriage. According to him, the revision petitioner was leading an immoral life and had eloped with one Bobban in the year 1996. Subsequently, on 20.5.1998 an agreement was executed between himself and the revision petitioner as per which both of them had agreed to live separately and the first petitioner had also agreed to relinquish her claim for maintenance. According to him, she is living separately without sufficient reason and that she is a labourer getting a sum of Rs.3,000/- per month. He has contended that he is getting only a sum of Rs.1,500/- per month as wages and that he has to look after his mother also.

3. The evidence adduced in the matter consisted of the testimony of PW1, CPWs' 1 to 3 and Exts. D1 to D8.

4. The revision petitioner has only disputed the order of the court below declining maintenance to her. The court below denied maintenance to the revision petitioner mainly on the ground of Ext. D1 agreement. Ext. D1 agreement has been

executed on 20.5.1998 wherein the revision petitioner is also a signatory. The above agreement is also attested by two witnesses and one of whom is CPW3. It is mentioned that for the last two years the revision petitioner and the respondent are living separately on account of the allegation that she is having illicit relationship. In Ext. D1 agreement it is also mentioned that no amount of maintenance will be paid by the respondent to the revision petitioner and that she will not be entitled for any amount of maintenance or any right in the property of the respondent.

5. CPW3 is a witness to the agreement. He has testified in proof of the same. He has deposed that the revision petitioner was living with one Bobban and that he saw both of them living together when he went to their house on two occasions. It is the evidence of PW1, the petitioner/revision petitioner as well as CPW3 that the agreement was executed at Family Councelling Centre. According to PW1 she was made to sign in blank paper. But nothing has been brought out in the cross examination of CPW3 to disbelieve his version. It is also to be noted that

although it is admitted that from 1998 they are living separately the proceedings under Section 125 Crl.P.C. has been initiated only in 2003. It is also pertinent to note that no specific act of ill treatment or cruelty has been alleged against the respondent. She has also deposed that she is not willing to live with the respondent. It is also to be noted that CPW3 has stated that one Karunan was also present at the time of executing Ext. D1 agreement. PW1 has admitted that Karunan is her uncle. In Ext. D1 signature of Karunan is also seen. In the circumstances, I find that the revision petitioner could not establish that she is living separately for sufficient reasons.

6. The counsel for the revision petitioner has relied on the decision reported in **Ranjit Kaur vs. Pavittar Singh (1992 Crl. Law Journal 262)** in which the Division Bench of Punjab and Hariyana has held that an agreement as such cannot take away the right of wife to claim maintenance under Section 125 Crl.P.C. The above proposition cannot be disputed. But in the instant case, I find that it stands established that the petitioner is living separately without sufficient reason and hence she would

not be entitled to claim separate maintenance. I find no reason to disturb the findings of the court below.

The revision petition is dismissed.

K.R.UDAYABHANU,
JUDGE

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